



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Asbestos Management, Incorporated

File: B-237841

Date: March 23, 1990

Douglas Gniewek, for the protester.
Lester Edelman, Esq., Department of the Army, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where agency improperly proceeded to evaluate the protester's architect-engineer qualifications without obtaining qualifications statements lost by agency after initial evaluation of submissions.

DECISION

Asbestos Management, Incorporated (AMI) protests as defective the selection procedures of the United States Army Corps of Engineers, Louisville District, pursuant to a notice published in the Commerce Business Daily (CBD) for architect-engineer (A-E) services for asbestos surveying of 400 family housing buildings at Selfridge Air National Guard Base, Michigan. AMI alleges that the Corps failed to consider all of the qualifications statements it submitted, with the result that the Corps did not select AMI as a firm with which to potentially conduct negotiations.

We sustain the protest.

Generally, under the selection procedures set forth in the Brooks Act, as amended, 40 U.S.C.A. § 541 et seq. (West Supp. 1989), and its implementing regulations, Federal Acquisition Regulation (FAR) part 36.6 (FAC 84-45), the contracting agency must publicly announce requirements for A-E services. An A-E evaluation board established by the agency evaluates the A-E performance data and statements of qualifications already on file, as well as those submitted in response to the announcement of the particular project,

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and selects at least three firms for discussions. The board recommends to the selection official, in order of preference, no less than three firms deemed most highly qualified. The selection official then lists, in order of preference, the firms most qualified to perform the required work. Negotiations are held with the firm ranked first. If the agency is unable to agree with the firm as to a fair and reasonable fee, negotiations are terminated and the second ranked firm is invited to submit its proposed fee. See generally FAR part 36.6; Nomura Enter., Inc., B-236217, Nov. 7, 1989, 69 Comp. Gen. _____, 89-2 CPD ¶ 437.

The Corps reports that 51 firms, including AMI, responded to its CBD announcement (July 26, 1989, and as amended on August 4) for the proposed project. The CBD notice generally described the project and necessary personnel. In its cover letter to its qualifications statements submitted to the Corps, AMI noted that it would provide asbestos consultation and analysis. The letter specifically referenced that a current standard form (SF) 254 (entitled "Architect-Engineer and Related Services Questionnaire") was on file with the Corps' Pacific District, and it enclosed SF 255 (entitled "Architect-Engineer and Related Services Questionnaire for a Specific Project").^{1/} In addition, in the same cover letter to the Corps, AMI specifically stated that it had enclosed SFs 254 and 255 for BEI Associates, Inc., a firm engaged as a "key consultant" to AMI to provide the required architectural, mechanical engineering, and drafting services for this project.

On September 15, after reviewing the qualifications statements of all 51 firms, the preselection board selected nine of these firms, including AMI, as being the most qualified to perform the required work. On September 21, upon reviewing the qualifications statements of these nine firms, the selection board selected four of these nine firms as being the best qualified to perform the required work. This time, however, AMI was not selected as one of the four best qualified firms. The selection board ranked AMI as fifth out of the nine firms because it determined that AMI's "specialized experience and capacity as presented on [its] SF 255 [was] not as good as the selected firms." On October 10, AMI received notice from the contracting officer of its non-selection.

^{1/} SF 254 is submitted annually by firms wishing to be considered for A-E contracts. SF 255 is a supplement to the SF 254 reflecting job specific experience.

By letter dated October 25, AMI filed an agency-level protest, generally challenging the Corps' selection procedures and failure to choose AMI as one of the four best qualified firms with which to potentially conduct negotiations. The contracting officer responded by letter dated November 2 that, while AMI was determined to be highly qualified, upon further review it was determined not to be one of the four best qualified firms for the project based upon professional qualifications of staff, capacity to perform, and specific experience, especially on residential type buildings. The contracting officer further stated that although AMI claimed to have included in its original submission to the Corps SFs 254 and 255 for BEI, upon reviewing the official selection file, the contracting officer did not find this information in the file. The contracting officer continued that "[t]his fact had a direct bearing on [AMI's] not being selected." This protest followed.

AMI generally challenges as defective the Corps' selection procedures by focusing on the contracting officer's contention that it never submitted SFs 254 and 255 for BEI. AMI essentially argues that had the Corps not failed to evaluate all of the qualifications statements it submitted, including SFs 254 and 255 for BEI, its ranking would ultimately have been higher than fifth out of the nine firms.

The Corps merely responds by stating AMI never submitted SFs 254 and 255 for BEI, and argues that in any event, the alleged nonsubmission of these qualifications statements from AMI was only one factor--"not the sole dispositive factor"--in its evaluation and ranking of AMI. The Corps further indicates that even if AMI had submitted these qualifications statements, its evaluation would have yielded the same result, specifically that AMI still would have been ranked fifth.

We find that the Corps acted unreasonably in proceeding with the evaluation without BEI's qualifications statements. Based on the evidence in the record, we believe the Corps had actual notice of AMI's apparent submission of BEI's qualifications statements. AMI's cover letter to its qualifications statements, submitted to the Corps in response to the CBD notice, specifically referenced that AMI had enclosed in its qualifications statements package SFs 254 and 255 for BEI, and identified BEI as a key consultant to AMI. AMI also submitted to our Office an affidavit from one of its sales representatives who states that on August 29, 1989, he personally reviewed AMI's qualifications statements package prior to its being

sealed for mailing. He states that this package did include SFs 254 and 255 for BEI. The Corps does not explicitly deny receiving SFs 254 and 255 for BEI, and the contracting officer only states that upon reviewing the official selection file, in response to AMI's agency-level protest, he did not find these qualifications statements for BEI in the file.

Further, concerning the evaluation, the Corps offers no explanation of how AMI could have made it through the initial preselection process (being ranked as one of nine firms out of a total of 51 firms submitting qualifications statements) without the Corps' having BEI's SFs 254 and 255 to evaluate. Indeed, the fact that AMI was chosen as one of nine firms deemed most qualified to perform the required work reasonably indicates that the Corps must have had BEI's SFs 254 and 255 to evaluate, since it is unlikely that AMI would have made it through the preselection process without evaluation of the qualification statement of a major consultant. Thus, the record suggests that SFs 254 and 255 for BEI were most likely lost by the Corps between the time of the initial preselection process and the final selection process, at which time AMI was determined not to be one of the four best qualified firms to perform the required work.

Therefore, based on the preponderance of the evidence in the record, we conclude that AMI did submit SFs 254 and 255 for BEI, and that the Corps lost these qualifications statements at some point after the initial preselection process. Since the Corps lost this information, which was important to a complete evaluation of AMI's qualifications, during the evaluation process and reasonably should have been aware of the loss, we think the Corps erred in proceeding with the evaluation without obtaining another copy of BEI's qualifications statements from AMI. Cf. Physio Control Corp., B-234558 et al., June 26, 1989, 89-1 CPD ¶ 599. While the Chief Counsel for the Corps generally alleges that the lack of these statements did not prejudice the protester, we are persuaded by the statement made by the contracting officer in response to AMI's agency-level protest that the absence of BEI's SFs 254 and 255 "had a direct bearing on [AMI's] not being selected." We

therefore find that the protester was prejudiced by the faulty evaluation.^{2/}

Accordingly, we recommend that the Corps reopen the selection process and reevaluate the qualifications statements of those nine firms, including AMI, deemed most qualified by the preselection board to perform the required work. Further, we find AMI is entitled to its protest costs. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1989).

The protest is sustained.



Acting Comptroller General
of the United States

^{2/} We note that although the Corps indicates that AMI still would have been ranked fifth had it received and evaluated BEI's SFs 254 and 255, there is no indication in the record that the Corps has in fact subsequently reviewed these statements. Thus, the Corps argument is purely speculative.